IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 264 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ANILKUMAR RANCHHODJI DESAI

Versus

UNION OF INDIA

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Appearance:

MR VN BHAGODIA for Petitioner

MR JC SHETH for Respondent No. 1, 2, 3, 4

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CORAM : MR.JUSTICE J.M.PANCHAL

Date of decision: 09/03/2001

ORAL JUDGEMENT

In this petition, which is filed under Article 226 of the Constitution, the petitioner has prayed to issue a writ of mandamus or a writ of certiorari or any other writ or order directing the respondents to remove

all obstacles and hindrances put in the form of steel plate angels on the Udwada - Paria Road in village Orwad, Taluka : Pardi, District : Valsad. The petitioner has further prayed to restrain the respondents from causing any hindrance or obstacle on the above said road in any manner at any time in future and to keep the road open for vehicular and pedestrian traffic.

2. The petitioner is a resident of village Orwad. According to him, the residents of village Orwad and nearby villages were using road known as 'Udwada - Paria Road', which connects the interior villages with National Highway No.8. The claim made by the petitioner in the petition is that the road was being used since time immemorial for vehicular as well as pedestrian traffic, but on August 11, 1988, the Railway Authorities have closed the road by constructing railway track and obstructed all vehicular traffic. According to the petitioner, the road belongs to Orwad Gram Panchayat and, therefore, the respondents are not entitled to use the same for the purposes of laying down railway track. The grievance made by the petitioner in the petition is that a complaint dated August 11, 1988 was addressed to Collector, Valsad pointing out illegal use of the road by the Railway Authorities, but the grievance has not been redressed by the Collector. Under the circumstances, the petitioner has filed present petition and claimed reliefs to which reference is made earlier.

3. Mr. J.C.Sheth, learned counsel for the respondents states that affidavit-in-reply has been sent to the competent authority for swearing purposes, but is not received back from him and, therefore, on his undertaking to file sworn reply, a simply copy of affidavit-in-reply be taken into consideration while disposing of the petition. Having regard to the facts of the case, simple copy of affidavit-in-reply is ordered to be taken on record of the petition and the learned counsel is directed to place affidavit-in-reply sworn by the competent authority on the record of the petition within reasonable time.

4. This is an old matter and though this matter has been notified on board for final hearing on several occasions, learned counsel for the petitioner has not remained present.

5. In the reply affidavit, what is claimed is that the subject matter of the petition is of the ownership of the railway and as such the railway is entitled to use the land in question for its purpose. What is asserted

in the reply is that the question whether Orwad Gram Panchayat or the railway is the owner of the disputed land can only be decided by the competent Forum after the parties are permitted to adduce evidence in support of their respective claims and as the question of ownership of the land involves determination of disputed questions of fact, petition filed under Article 226 of the Constitution should not be entertained. It is also stated in the reply that as the Railway Authorities have got the land in question surveyed from the Revenue Department, the petition should be dismissed.

6. I have heard the learned counsel for the respondents and taken into consideration the documents forming part of the petition. The petition is filed on the footing that the disputed land belongs to Orwad Gram Panchayat and the Railway Authorities are not entitled to use the same for laying down railway track. As observed earlier, the claim of the respodents is that the disputed land belongs to the railway and, therefore, is entitled to use the same for its own purposes. The question whether the land in dispute belongs to Orwad Gram Panchayat or the railway, cannot be decided in a petition filed under Article 226 of the Constitution, more particularly when Orwad Gram Panchayat has not approached the Court with a claim that the disputed land belongs to the Panchayat. The reply affidavit makes it evident that the Railway Authorities have got the land in question surveyed from the Revenue Department and, therefore, the petitioner is not entitled to the reliefs claimed in the petition. It may be stated that though in the petition interim mandatory injunction directing the Railway Authorities to remove the obstacles and hindrances put in the form of steel plate angles on the Udwada-Paria Road was claimed, the same was not granted. Hence, it is reasonable to infer that by this time the railway track must have been constructed and put to use by the Railway Authorities. The net result of the above discussion is that I do not find any merits in the petition and the petition is liable to be dismissed.

For the foregoing reasons, the petition fails and is dismissed. Rule is discharged with no order as to costs.

(J.M.Panchal,J.)
(patel)